an infant allows him to recover. The second contention of the judges for the affirmative, that the wagon and its contents were intrinsically dangerous to the public safety, strengthens their first contention, that defendant was negligent in leaving the wagon in the public highway; but neither of these contentions is considered of great importance, nor given much attention by the judges for reversal, who seem to rely upon the particular fact that it required a flame or red-hot metal to ignite the mixture of illuminating gas and air as a sufficient answer. It is to the third question involved that the judges for reversal give most of their attention. Can plaintiff recover although he was himself a trespasser, because he is an infant? This is the chief bone of contention. It is upon this point that the three leading cases of *Ryan* v. *Towar, Kaumeier* v. *Electric Co.,* and *Powers* v. *Harlow,* quoted above, are cited pro and con. In the words of HOOKER, J., "Whether we are to understand that one who meddles with the property of another upon the highway is not to be considered a trespasser, or that a person, though a trespasser, if he invades the land of another, is not a trespasser when he climbs upon a wagon in the highway, or that a child is not a trespasser in such a case, though an adult would be, although both would be trespassers if they entered upon land of another, is not made clear. There is another alternative, viz., that while one does not owe a duty to a trespasser upon land, he does to a trespasser upon the personal property in the highway, especially if the property is attractive enough to induce a child to trespass, and it goes without saying that in every such case it must have been so attractive or the child would not have trespassed. Everybody knows that he who invades and injures personal property of another is a wrongdoer and liable for the damages, although he be a child. The boy who blew up the gas wagon is liable as a wrongdoer, and would be though it had been accidental, because he was trespassing. Whichever horn of the dilemma is taken, we find the three cases cited an obstacle to recovery. They all say that an owner of property owes no duty to guard a trespasser, and that the rule applies to juveniles as well as to adults, and all admit that adults cannot recover in such cases." And he goes on to say that the case of *Ryan* v. *Towar* expressly repudiates the doctrine that the fact that the article trespassed upon is attractive to children makes a difference as to the legal relations of the parties, if the injury is due to a trespass, thus holding therefore that the "turntable cases" are radically wrong in principle and erroneous in their reasoning, and that the one ground which in his view it is perhaps possible for the judges holding for the affirmative to stand upon must go down. B. H.

COLLATERAL ATTACK ON INJUNCTIONAL ORDERS.—A recent decision in the United States Circuit Court of Appeals for the seventh circuit presents the question of collateral attack on an injunctional order in an interesting and novel way. Foreclosure proceedings had been instituted in a federal court, in which conflicting mortgage interests were represented by trustees for the holders of bonds secured by the mortgages, the bond holders themselves not being

parties to the suit. The priorities of the contesting mortgagees were determined, and a decree of foreclosure and sale was rendered, by the terms of which the court retained jurisdiction to enforce the conditions imposed upon the parties and such other orders as might be needed for the purpose of carrying out the decree. The mortgaged property was sold under the decree, and on the presentation of the master's report, certain dissatisfied bond holders appeared by an attorney, the plaintiff in error in the case under consideration, and interposed objections to the confirmation of the sale. The Court entered an order overruling their objections and restraining the parties to the proceedings, persons claiming under them, and their attorneys from setting up any pretended title as against the purchaser at the sale. An appeal from this order was denied the objecting bond holders by the United States Supreme Court, on the ground that they were not named as parties in the record of the original proceedings, and therefore were not entitled to a review of the case. Mr. Justice DAY addressed a letter to their attorney advising him that if their rights had been invaded the matter could be worked out in an original proceeding. Thereupon they, by the same attorney, instituted foreclosure proceedings in a state court. On the petition of the purchaser under the original foreclosure sale, this attorney was cited into the federal court which had issued the injunction, and was sentenced to imprisonment for contempt for disobedience thereof, the sentence to be suspended in case the suit in the state court were dismissed within five days. After dismissing the suit, in accordance with the sentence, the attorney appealed therefrom and the Circuit Court of Appeals, by a divided court, held that, since the bond holders were not parties in the original suit, except insofar as they were represented by the trustee, the trial court had no jurisdiction over their persons to bind them by its injunctional orders, that their appearance for the purpose of objecting to the confirmation of the sale gave the court, on overruling their objections, no further jurisdiction over their persons, that the retained jurisdiction of the court did not embrace the right to issue such an injunction, and that the issues presented by the objections to the confirmation of the sale were not such as to warrant the court in granting the order.

A dissenting opinion was rendered, on the ground, inter alia, that the issues presented to the court by the objections of the bond holders called for the very order in question, that the court had retained jurisdiction to make such an order by the express terms of the original decree, that the bond holders and their attorney were actually before the court at the time the order was made, and consequently within its jurisdiction, and that, by defying the order, they could not obtain a review thereof in the collateral proceedings resulting from their disobedience. *Lewis* v. *Peck et al.* (1907), 154 Fed. 273.

It is well settled that where a court lacks jurisdiction, disobedience of its injunctional orders is not contempt. *Evans* v. *Pack* (1878), Fed. Cas. No. 4566; *Willeford* v. *State* (1884), 43 Ark. 62; *Darst* v. *People* (1871), 62 Ills. 306; *Kerfoot* v. *People* (1893), 51 Ill. App. 409; *Ex Parte Wimberley* (1879), 57 Miss. 437. And it is just as firmly settled that an injunction erroneously granted, where there is jurisdiction, must be obeyed. *Kerfoot* v. *People*

(1893), 51 Ill. App. 409; *Central Union Telegraph Co.* v. *State* (1886), 110 Ind. 203; *Billard* v. *Erhart* (1886), 35 Kans. 616; *Forrest* v. *Price* (1893), 52 N. J. Eq. 16; *Sullivan* v. *Judah* (1834), 4 Paige (N. Y.) 444; *People* v. *McKane* (1894), 78 Hun 154; *Rutherford* v. *Metcalf* (1818), 6 *Tenn.* (5 Hay.), 58; *Stimson* v. *Putnam* (1868), 41 Vt. 238.

It seems clear from the authorities that the trial court in the original proceedings between the trustees had no such jurisdiction over the persons of the bond holders as to make an injunctional order binding on them. The decree there rendered could bind the bond holders to the extent of their interest in *res* alone. *Pennoyer* v. *Neff* (1877), 95 U. S. 714; *Cooper* v. *Reynolds* (1870), 10 Wall. 308; *Parsons* v. *Greenville & C. R. Co.* (1877), 1 Hughes 279, Fed. Cas. No. 10776; *Hawley* v. *Fairbanks* (1882), 108 U. S. 543; *In Reese* (1900), 98 Fed. 984; *Iveson* v. *Harris* (1802), 7 Ves. 251; *Fellows* v. *Fellows* (1819), 4 Johns. Ch. (N. Y.) 25.

The appellate court was divided on the question whether, on the issues presented in the confirmation proceedings, the trial court could make such an order as the one under consideration, the majority holding that the issue was whether or not the sale should be confirmed, and, when that was decided, the proceedings were at an end. *Bostwick* v. *Atkins* (1849), 3 N. Y. 53, is a case which, although governed by the statute, accords with this view. There it is said, "As the inquiry [in confirmation proceedings] is limited to the fairness and good faith of the sale, the parties should not be precluded by the decree from subsequently contesting other matters."

Did the trial court acquire jurisdiction over the persons of the bond holders and their attorney when they appeared for the purpose of objecting to the confirmation sale? There are not many cases involving the point, but the following seem to answer the question affirmatively: *Taylor* v. *Gilpin* (1861), 3 Met. (Ky.), 544; *Franse* v. *Armbruster* (1890), 28 Neb. 467; *Herndon* v. *Crawford* (1874), 41 Tex. 267. In the latter case Herndon appeared for the purpose of objecting to the report of commissioners for partition, and the court said: "But, if it did not sufficiently appear from the judgment that the plaintiff in error was in court and consented to the decree, he certainly made an appearance when he filed his objections to the report of the commissioners." In this connection, however, it must be remembered that the dissatisfied bond holders had been denied an appeal by the United States Supreme Court, on the ground that they were strangers to the record.

One can hardly understand how the Circuit Court of Appeals could have decided the case otherwise than it did, since the effect of such a decision would have been to deny the bond holders the right of either direct or collateral attack on the order, thus binding them more absolutely than if they had been parties to the original suit. C. A. D.